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No. 528

In the Supreme Court of the United States

OCTOBER TERM, 1960

COUNTY OF LAWRENCE, CITY OF NEW CASTLE, CITY OF NEW CASTLE SCHOOL DISTRICT, COUNTY OF LAWRENCE INSTITUTION DISTRICT, APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MOTION TO AFFIRM

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Pursuant to Rule 16, paragraph 1, of the Revised Rules of this Court, the United States, appellee, respectfully moves that the judgment of the Court of Appeals for the Third Circuit be affirmed on the ground that the question on which the decision of the cause depends is so unsubstantial as not to need further argument.

STATEMENT

This suit was instituted by the United States in the United States District Court for the Western District of Pennsylvania in May 1957 to have declared void, illegal, and of no effect certain tax liens in the amount of $116,900, imposed by local taxing authori-

ties, appellants herein, for the tax year 1954 on real property owned by the United States at the time the taxes were levied.

The case was presented on an agreed statement of facts. (App. 23a[1]) which may be briefly summarized as follows:

For some years prior to 1950, legal title to the property, an industrial manufacturing plant, was held by the Reconstruction Finance Corporation, an instrumentality of the United States. In 1950, legal title was conveyed by the Reconstruction Finance Corporation to the United States. The deed was recorded in the Lawrence County Deed Book on December 15, 1953. During the tax year 1954, and for several years prior thereto, the property had been under a series of leases to United Engineering and Foundry Company. Local real property taxes were paid by United on the plant up through the year 1953 in accordance with the terms of its leases. However, on the basis of the Court of Claims decision in *Board of County Com'rs.* v. *United States,* 123 C. Cls. 304, the 1954 lease did not include the tax payment provision. As a result, the 1954 taxes on the plant went unpaid, and the local taxing authorities imposed the liens which this suit was brought to remove.[2] On July 19, 1956, the United States conveyed the property to Mesta Machine Company, and by special

[1] The reference is to the Appendix for the United States before the Court of Appeals.

[2] Payments in lieu of taxes for the years 1955 and 1956 were specifically authorized by Congress in the Act of August 12, 1955, 69 Stat. 722, 40 U.S.C. 523.

agreement simultaneously executed the Government assumed the responsibility for the payment of the taxes should the pending suit be unsuccessful in having the liens removed.

On these facts the District Court dismissed the Government's complaint on April 17, 1959. *United States* v. *County of Lawrence*, 170 F. Supp. 307. (Appendix A, Appellants' Jurisdictional Statement, pp. 26–39.) The Government appealed and the Court of Appeals for the Third Circuit reversed and entered judgment in favor of the United States, *United States* v. *County of Lawrence*, 280 F. 2d 462, relying on this Court's decision in *Rohr Corp.* v. *San Diego County*, 362 U.S. 628, which was announced after oral argument of the instant case. (Appendix A, Appellants' Jurisdictional Statement, pp. 13–25.) From that decision, the local taxing authorities bring this appeal, pursuant to 28 U.S.C. 1254(2).

ARGUMENT

The recent decision of this Court in *Rohr Corp.* v. *San Diego County*, 362 U.S. 628, upholding the Federal Government's immunity from local taxation, was made within a framework virtually identical to the factual situation involved here. The only distinction between the two cases serves to strengthen the holding of the Court of Appeals in the instant case. In *Rohr*, record title to the realty involved had not been transferred to the United States, but had remained in the Reconstruction Finance Corporation, although full control and management of the property had been given over to another agency. While in the hands of

R.F.C., the property did not enjoy the tax immune status normally attributed to federal property, by reason of a specific statutory waiver of that immunity. On these facts, this Court held that the location of dry legal title was not determinative, and the waiver did not extend to the property after its physical transfer to another agency of the United States. In reaching this conclusion, the Court remarked (362 U.S. at p. 633):

> There would be no question as to the exemption of the real property involved had the record title been in the name of the United States.

In the case now before the Court, record legal title for the tax period involved was indisputably in the United States, and thus it becomes crystal clear that this case was correctly decided in the Court of Appeals. The difficulties that have been experienced in recent years in determining whether particular types of taxes imposed on Government contractors, lessees, etc., violated the federal immunity from taxation are irrelevant to this case. This Court has never departed from the basic holding of *Van Brocklin* v. *Tennessee*, 117 U.S. 151, that general real estate taxes may not be imposed directly upon realty the title to which is in the United States, regardless of whether or not it is making use of the property.[3] The *Rohr* case is the

[3] See, *e.g.*, *United States* v. *City of Detroit*, 355 U.S. 466, 469; *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110, 117; *S.R.A., Inc.* v. *Minnesota*, 327 U.S. 558, 561–562; *United States* v. *Allegheny County*, 322 U.S. 174, 176–177, 186–189; *Mayo* v. *United States*, 319 U.S. 441.

most recent reaffirmation of that principle and it controls here.

CONCLUSION

For the foregoing reasons, it is clear that there is no substantial question involved and the judgment of the Court of Appeals for the Third Circuit should be affirmed.

Respectfully submitted.

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